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Filed April 8, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 567.

I. STANTON CARTER (ON BEHALF OF OBERLIN M. CARTER), APPELLANT,

vs.

ROBERT W. McCLAUGHRY, WARDEN OF THE UNITED STATES PENITENTIARY AT FORT LEAVENWORTH, KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

OBERLIN M. CARTER, *Petitioner*,
By JEREMIAH M. WILSON,
His Attorney.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-8-'01

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

Comes now the said Oberlin M. Carter (on whose behalf the petition was filed in the above-entitled case), by Jeremiah M. Wilson, his attorney, and moves the court to admit him to bail pending the final adjudication of the said case in this honorable court, and in that behalf states that, as will more fully appear by the printed record in the said case, he was a captain in the Corps of Engineers of the United States Army; that he was tried before a court-martial on charges of conspiracy to defraud the United States, and specifications thereunder, and also for embezzlement of the moneys of the United States; that he was convicted, as in

said record more specifically appears, and sentenced to pay a fine of five thousand dollars ($5,000), to imprisonment in the United States *penitentiary at Fort Leavenworth*, Kansas, to dismissal from the service, and to publication of the sentence of the court; that the said fine of five thousand dollars ($5,000) has been paid, he has been dismissed from the service, and said publication has been made, and the question presented in the proceeding herein by *habeas corpus* is as to whether the court-martial had jurisdiction to impose the punishment of imprisonment upon him to which he is now being subjected; that, by virtue of the said sentence, he is now imprisoned in the said penitentiary, and held in custody by the said Robert W. McClaughry, and has been since the 27th day of April, A. D. 1900; that, as likewise appears by the said record, he has been indicted in the United States district court for the southern district of Georgia, with Benjamin D. Green, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, and Michael A. Connolly, for the same offenses for which he was tried before the said court-martial, and which said indictment is still pending against him.

He further shows to the court that, since his said imprisonment, his health has become impaired, as more fully appears in the affidavits hereto attached, and to which reference is hereby made, for the purposes of this motion, and, in furtherance of his said motion, says that it is of great importance to him that he be relieved of said imprisonment pending his said appeal to this honorable court because of the necessity for making preparation for the trial of the said case in said court and for the reasons specifically set forth in his affidavit hereunto annexed, to which reference is hereby made, and he prays that the same may be considered as a part of this motion.

In consideration of the matters hereinabove referred to, petitioner prays that he may be enlarged upon bail, upon such terms as to recognizance as this court may pre-

scribe, pending the hearing and determination of the appeal in the above-entitled cause, in conformity with the statute and rules of this court in such case made and provided.

OBERLIN M. CARTER, *Petitioner*,
By JEREMIAH M. WILSON,
His Attorney.

WASHINGTON, D. C., *April* 6, 1901.

IN THE SUPREME COURT OF THE UNITED STATES.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER,
Plaintiff in Error,
vs.
ROBERT W. MCCLAUGHRY, *Defendant in Error.*

STATE OF KANSAS,
Leavenworth County, } *ss:*

F. M. Thomas, being duly sworn, says that I am a practicing physician in the city and county of Leavenworth, State of Kansas, and have been such for seven years last past, and a graduate of the University of Louisville. I was for five years the prison surgeon at the Federal penitentiary in which Captain Carter, the petitioner in the above-entitled cause, is now confined. I was such surgeon at the time Captain Carter was received at the prison, and so know the condition of his health at the time of beginning his course of confinement there. I was called to examine him professionally on yesterday, April 1, 1901, and was thus able to contrast the condition in which he now is with that in which he was when he was received at the prison, in the spring of 1900. At the time he arrived at the prison he

was in good health. My examination of yesterday disclosed that he was suffering from neurasthenia. He was very nervous, his nervousness manifesting itself, among other ways, by a restlessness and seeming inability to sit still and a constant walking of the floor. This was unusual in him, as nothing of the kind characterized him at the time I was surgeon at the prison, which was for seven months after he first came to the institution. On closer examination I found that his face was flushed, and that it would alternately flush and become pale, and that his skin was abnormally dry. His head felt hot when your hand was placed upon his forehead. He complained of headaches in the top and forward part of his head. His pulse was rapid and upon slight exertion increased very materially in rapidity. There was a twitching and tremor about the muscles of the face which I had never noticed before during my acquaintance with him. I noticed a loss of memory with him, and especially verbal memory—that is to say, he would not be able to remember some word that he would want to use. The condition in which I find him shows plainly that he is suffering from neurasthenia, and that he is on the verge of a nervous collapse, which will not only jeopardize his general health, but his reason as well. I am of the opinion that if he is confined at the prison for any considerable period that the man will be a physical and mental wreck. My knowledge of Mr. Carter has been more than considerable, because during the time that I was prison surgeon and he was an inmate of the institution, which extended over the period of some four or five months, I met, saw, and talked with him every day. He was then, as now, employed as an attendant in the hospital, where my duties took me daily, and in that way I was brought in daily contact with him, and the contrast between his present condition and that in which he was at the time of his arrival at Fort Leavenworth is painfully marked.

F. M. Thomas, M. D.

Subscribed and sworn to before me this 1st day of August, A. D. 1901.

[seal.] David W. Flynn,
Notary Public.

My commission expires August 31, 1904.

IN THE SUPREME COURT OF THE UNITED STATES.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, *Plaintiff in Error,*
vs.
ROBERT W. MCCLAUGHRY, *Defendant in Error.*

STATE OF KANSAS, *Leavenworth County,* } ss:

A. F. Yohe, being duly sworn, says: I am a practicing physician of the city of Leavenworth, county of Leavenworth, State of Kansas, and have been for twelve years last past, and am now the county physician of Leavenworth county, Kansas, and am a graduate of Rush medical college of Chicago, Illinois, and Bellevue Hospital medical college of New York. I was called today to examine Mr. Oberlin M. Carter, who is at present confined in the Federal prison at Fort Leavenworth, with a view of ascertaining his physical condition, and my examination disclosed that his nervous system was in a greatly disordered condition; that he is suffering from what physicians call neurasthenia, which is a medical term expressive of the idea that is ordinarily conveyed by the words nervous prostration. His symptoms indicate functional perversion to a most pronounced degree. I am informed by Doctors Walter and Thomas that the examination made of the patient on February 12th last disclosed abnormal perspiration, and beyond question his condition today disclosed abnormal dryness of the skin. His heart's action was weak and pronouncedly influenced by the slightest sentiment of any kind. The slightest exertion, either physical or mental, produced a flushing that indicated pronounced vaso-motor disturbance. He is also suffering from anemia. He has spinal tenderness; pronounced exaggeration of patellar reflexus. He has marked prehensile inco-ordination, as evidenced by his inability to touch a designated portion of his face when standing blindfolded. He has muscular inco-ordination, which manifests itself more particularly when his mind is absorbed in some topic of conversation, which is evidenced by a momentary loss of equilibrium.

His loss of emotional control is very marked. His lips

and chin would tremble and his eyes fill with tears without any reason whatever. The most ordinary subject will bring forth this manifestation of emotional weakness, so marked, indeed, as to be almost pitiful. The spinal irritation is also manifested by the manner in which he moved backward and forward under my directions when blindfolded.

All these things that I have enumerated are symptoms that point unerringly to the conclusion at which any physician would be obliged to arrive—namely, that he is suffering from neurasthenia. In my opinion as a physician, unless his surroundings are changed he will in a very short time develop a nervous condition far more grave than his present condition. In fact some of his symptoms at present point possibly to the fact that organic changes have already taken place, and beyond question, if his environments are not altered, such organic changes will take place in the near future.

A. F. YOHE, M. D.

Subscribed and sworn to before me this 1st day of April, 1901.

[SEAL.] DAVID W. FLYNN,
Notary Public.

My commission expires August 31, 1904.

IN THE SUPREME COURT OF THE UNITED STATES.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER,
Plaintiff in Error,
vs.
ROBERT W. MCCLAUGHRY, *Defendant in Error.*

STATE OF KANSAS,
Leavenworth County, } ss:

W. W. Walter says that he is a physician, residing and practicing in the city of Leavenworth, Leavenworth county, State of Kansas, and has been so practicing for more than seventeen years last past; that he is a graduate of the University of Pennsylvania, medical department; that he had occasion, professionally, to examine Oberlin M. Carter,

the petitioner in the above-entitled cause, with a view of determining the present state of his health, and on oath deposes and says:

I visited Mr. Carter on the afternoon of April 1, 1901, and found him suffering from a condition known as neurasthenia, or nervous exhaustion. Mr. Carter is 44 years old and prematurely gray. He has an abnormal tenderness of the scalp. He complains of much headache. He has fleeting neuralgias—in other words, sharp, darting pains. He has attacks of vertigo. He flushes and pales alternately in such a manner as to markedly indicate loss of emotional control. His emotions are easily aroused, and when once aroused are beyond his control, as is evidenced by the fact that tears fill his eyes frequently and without any cause. He manifests lack of memory, and there are times when he has complete lapses in this respect, losing the topic of conversation and jumping from one subject to another, without connection or relevancy, as he did several times when I was talking to him this afternoon. He has an unnatural dryness of the skin. The scalp and forehead are very hot to the touch and his feet are quite cold, while his bodily temperature is normal. He manifests muscular weakness and inco-ordination, and discloses an impairment of his mental faculties.

Judging from the man's present condition, I consider he is on the verge of a complete break-down, and the neurasthenic condition is most likely to develop in melancholia, or some kindred form of insanity, if the conditions under which he is now living continue, as I am convinced that his present condition is due to his present environments.

W. W. WALTER.

Subscribed and sworn to before me this first day of April, 1901.

[SEAL.] DAVID W. FLYNN,
Notary Public.

My commission expires August 31, 1904.

IN THE SUPREME COURT OF THE STATE OF KANSAS.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER,
Plaintiff in Error,
vs.
ROBERT W. MCCLAUGHRY, *Defendant in Error.*

STATE OF KANSAS,
Leavenworth County, } *ss:*

S. F. Neely, being duly sworn, says that he is the mayor of Leavenworth city, Kansas; that he is a resident of Leavenworth city and has been such resident for the last thirty years; that for many years he was a practicing physician in said city prior to the time of his taking office under the United States Government as a United States marshal; that he has at all times kept in touch with the medical profession in this community, and knows and states the fact to be that Doctors W. W. Walter, F. M. Thomas, and A. F. Yohe are among the leading physicians of our city and State; none stand higher than they in their profession, and as citizens they are, beyond question, high-minded gentlemen.

S. F. NEELY.

Subscribed and sworn to before me this 1st day of April, 1901.

[SEAL.] DAVID W. FLYNN,
Notary Public.

My commission expires August 31, 1904.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

OBERLIN M. CARTER, on the Petition of I. STANTON CARTER, *Petitioner,*
vs.
ROBERT W. MCCLAUGHRY, *Respondent.*

Affidavit.

STATE OF KANSAS, *Leavenworth County,* } *ss:*

Oberlin M. Carter, being duly sworn, says that he is the petitioner in the above-entitled cause, and as a ground why his application to be enlarged upon recognizance pending his appeal in the above-entitled matter should be granted, and as good reasons why the same should be done, says:

I am innocent of the charges upon which I was convicted.

* * * * * * *

The only way in which my innocence may be established is by pressing to a final hearing the charges embraced in the indictment found by the grand jury in the United States district court for the district of Georgia, and which cannot be tried because of my absence therefrom. If such a trial could be had, then my cause could be tried before a court where law is administered judicially, which can compel the attendance of witnesses both for the Government and for the defense, and whether such witnesses be soldiers or civilians.

The court-martial by which I was convicted had no power to compel the testimony of civilian witnesses or require the production of civil documents and records, and as a consequence those things which would have demonstrated my innocence beyond a peradventure were not presented to that court because of the absence of this power.

Yet such a trial would be a vain and futile thing if the

witnesses by which my innocence can be established should at the time of such trial be dead. Many of these witnesses are old men, and every day's delay increases the chances of their demise. Already the following-named witnesses, whose testimony would be of inestimable value to me, have died, namely, Generals Newton, Duane, Casey, and Gilmore, Major Post and Captain Bailey, Mr. Coulson, Mr. Meigs, and Mr. Reed.

One of the witnesses now living, whose testimony is essential to the rehabilitation of my character, is my father-in-law, Mr. Westcott, who is an old man now, some seventy-five years of age. Despite what I am told of his statements elsewhere, I know that when on the witness stand face to face with me he will not deny that the funds that I expended at Savannah in excess of my pay were provided by him. Another witness is General Craighill, now nearly seventy years old. He is the only living officer who was my commanding officer who knows how my work was done from personal knowledge resulting from inspection and examination at the time that the work was done. He was before his retirement first my division engineer, and later chief of engineers, and would testify, as he did before the court-martial, that my work was the most successful and economical work of its kind in the world, and that I was entitled to all the credit therefor.

The deceased witnesses whom I have named above, to wit, Generals Newton, Duane, Casey, and Gilmore, and Major Post and Captain Bailey, all possessed in some degree the same knowledge now possessed alone by General Craighill; but they, as I have already stated, are dead. I am informed that the testimony given by General Craighill before the court-martial could not be employed by me as evidence in my trial in the United States district court of Georgia in the event that he should die before such trial was had, and should he die without having first testified in my behalf in said matter I would be without the means of demonstrating in the most satisfactory manner the character of the work done by me, it being my idea that the fact that I did this work in accordance with contracts approved by General Craighill, and more economically than any work of the kind that was ever done, and that the results were better, is certainly some evidence of the fact that the money appropriated

and expended for that work did not become the fruits of fraud.

Another gentleman whose death has deprived me of valuable testimony is Mr. Reed, of the firm of Reed & Flagg, who were for many years Mr. Westcott's brokers, and who testified that he knew that Mr. Westcott had given me the money, as I claimed, and that the business I transacted with his firm, as Mr. Westcott's attorney-in-fact, was actually the business of Mr. Westcott, knowing these facts from his intimate knowledge of Mr. Westcott's financial affairs. This statement of Mr. Reed is in writing and is in the office of the War Department, at Washington, though they have ever and always refused to me and my counsel a copy of the same. This testimony, however convincing it might be, from a moral standpoint, of course as legal evidence, is *nil*. Mr. Flagg, the surviving member of that firm, who knows much less of the matter than Mr. Reed did, possesses considerable knowledge of this phase of the case, and should death overtake him this portion of my proof would be annihilated.

Mr. Wisner is another witness whose testimony is of great value. He is one of the leading engineers in the United States and the world. He examined my work at the time it was attacked. This fact gives him greater knowledge of its character than could be obtained by any person who inspected it years later, though of course not so perfect a knowledge as is possessed by those officers who examined the work at the time it was being done. Mr. Wisner is an old man, advanced in years, though I am unable to state his exact age, and, more than that, his health is not good.

If I should be enlarged upon recognizance, I should at once proceed to Savannah, where the United States district court is now in session and where I am confident a trial will be given me, where all the facts bearing upon this case will be brought before a proper tribunal and my innocence established. The interval that lies between the time of this application and the time when my case can be heard in the Supreme Court will be ample for the purpose hereinbefore indicated. Should my enlargement not be authorized and the Supreme Court decide my appeal adversely, there can then be no judicial investigation of the merits of my case until it is too late for justice to be done.

Again, I am informed by my counsel that my study of the case has been such that I can be of more than material

assistance to them in the preparation of the briefs which will be employed in the Supreme Court in the pending proceedings, and by virtue of that fact my assistance is essential to a proper preparation of my case on appeal.

Further, much of the evidence necessary to my defense before the United States district court in Savannah must be based on expert, scientific knowledge, and no man can get together for me such facts as well as I can do it for myself, since I was in charge of the works there some fourteen years. However, if it were possible for another to do the work for me, it could only be done by experts, the price of whose services to the extent necessary in my case would be prohibitive.

Again, although the Government preserved my original vouchers, they seized every retained voucher, and I have not been permitted to have either original or copy. Every paper I had relating to my trial was seized, as was also my private letters sent and received by me in the last twenty years. My private accounts and bills and those of my dead wife, all were seized, and all still illegally held by the Government, and a personal inspection of them is imperatively necessary for my effective defense.

And, finally, my health has been seriously affected by the eighteen months of confinement to which I have been subjected. I urge this ground with great diffidence, because I recognize that if the court to which this application is being made should deem me guilty that the question of my health is bound to be a matter of little consequence, but if the Supreme Court should declare that I am unlawfully confined, then, surely, a wrong will have been wrought out if my health has been permitted to suffer by unlawful confinement. I appreciate that I have received at the hands of the prison authorities such kindness as the strict discipline of the institution makes possible, but to one of my temperament and sensibilities the things that imprisonment compels one to endure engender a mental suffering that is impossible to be told.

I recognize the fact to be that if I were guilty and the punishment inflicted upon me as a result of my guilt should destroy my health that there is no remedy for such a situation, but if I am innocent, which I know is a fact and which I can establish if given an opportunity, then it surely would be hard to have my health destroyed until, at least, the

court of last resort has determined that a punishment that may produce this result can lawfully be inflicted upon me.

O. M. CARTER.

Subscribed and sworn to before me this 15th day of February, 1901.

[SEAL.] ARTHUR M. JACKSON,
Notary Public.

My commission expires August 2, 1901.